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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/647,758 | 08/25/2003 | Earl Roger Singleton | S146 1080.1 | 2785 |
| 26158 | 7590 | 07/06/2004 | EXAMINER | |
| WOMBLE CARLYLE SANDRIDGE & RICE, PLLC P.O. BOX 7037 ATLANTA, GA 30357-0037 | | | MAYO, TARA L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3671 | |

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|-----------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/647,758 | SINGLETON, EARL ROGER | |
| | Examiner | Art Unit | |
| | Tara L. Mayo | 3671 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-11, 14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) 4-7, 12, 13 and 15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20031205</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claim 15 is objected to because of the following informalities: minor claim drafting error. In claim 15 on line 2, delete "compose" and insert therefor --comprise-- or make an equivalent change thereto. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 through 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Singleton et al. (U.S. Patent No. 6,416,674 B1).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

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Singleton et al. '674, as seen in Figure 3, disclose a silt retention sheet (35) comprising:

with regard to claim 1,

a water-permeable non-woven web (42; col. 7, lines 47 through 50; and claim 22);

at least one reinforcing element (40) attached to said water-permeable non-woven web at a predetermined location (col. 8, lines 17 through 34) for receiving a fastener (45) for attaching the silt retention sheet to a support member (10);

with regard to claim 2,

wherein said water-permeable non-woven web comprises spun bond polyester (col. 7, lines 38 through 45 and 58 through 61); and

with regard to claim 3,

wherein said reinforcing element comprises a woven or non-woven band.

4. Claims 8 through 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Clark et al. (U.S. Patent No. 6,723,669 B1).

Clark et al. '669, as seen in Figures 1, 2, and 8, disclose a sheet (10) comprising: with regard to claim 8,

a first water-permeable web (16);

a second water-permeable web (20) layered on said first water-permeable web; and

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at least one reinforcing element (18) disposed between a portion of said first water-permeable web and a portion of said second water-permeable web;
with regard to claim 9,

wherein at least one of said first and said second water-permeable webs is non-woven (col. 11, lines 59 through 61);
with regard to claim 10,

wherein said non-woven web comprises spun-bond polyester (col. 11, line 61 through col. 12, line 11); and
with regard to claim 12,

wherein said at least one reinforcing element comprises a series of strands woven or spun to form a band.

With regard to claim 8, the recitation that the sheet is for silt retention has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11, 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. (U.S. Patent No. 6,723,669 B1).

Clark et al. '669, as seen in Figures 1, 2, and 8, disclose a sheet (10) comprising:
with regard to claim 14,

a first water-permeable non-woven web (16);

a second water-permeable non-woven web (20) layered on said first water-permeable non-woven web; and

a reinforcing element (18) disposed at selected locations between said first water-permeable non-woven web and said second water-permeable non-woven web; and
with regard to claim 17,

wherein said first and said second water-permeable non-woven webs comprise spun bond polypropylene (col.11, lines 59 through 66).

Clark et al. '669 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claim 11,

the at least one reinforcing element comprising a plurality of reinforcing bands positioned at spaced locations along the first and second water-permeable webs;

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with regard to claim 14,

the reinforcing elements comprising a plurality of reinforcing elements disposed at selected locations between the first water-permeable non-woven web and the second water-permeable non-woven web; and

with regard to claim 16,

the plurality of reinforcing elements being aligned parallel to each other.

With regard to claims 11, 14, and 16, one-piece construction in place of separate elements fastened together is a design consideration with the skill of the art. In re Kohno, 391 F. 2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F. 2d 965, 144 USPQ 347 (CCPA 1965).

Allowable Subject Matter

7. Claims 4 through 7, 12, 13, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

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Conclusion

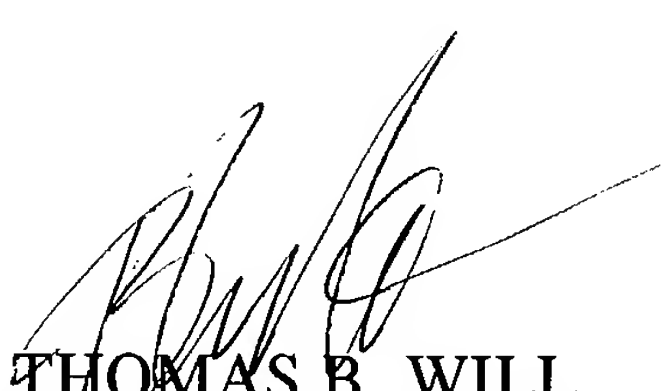
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


TLM
25 June 2004


THOMAS B. WILL
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